

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CELSO LEON,

Petitioner,

v.

A.P. KANE, Warden, et  
al.,

Respondents.

NO. CIV. S-04-2631 FCD JFM P

MEMORANDUM AND ORDER

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Petitioner Celso Leon ("petitioner") is a state prison inmate proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the Board of Parole Hearings' ("BPH") January 23, 2001 decision finding him unsuitable for early release on parole. On March 27, 2008, Magistrate Judge Moulds issued an order directing respondent to lodge within 15 days of the order the entire administrative record considered by the BPH in connection with petitioner's January 23, 2001 parole hearing (the "Order").

Respondent moves for reconsideration of that Order, pursuant to E.D. Cal. L.R. 72-303(c), on the ground that review of the

entire administrative record is improper under the AEDPA which limits this court's review to the state court's decision.

Under Local Rule 72-303(f), a magistrate judge's order shall be upheld unless it is "clearly erroneous or contrary to law." Although there is no legal basis provided in the Order to support requiring production of the administrative record, production may be compelled under Rule 7(a) of the Rules Governing § 2254 Proceedings. See Order, Stewart v. Shepherd, S-05-0458 RRB KJM P, filed Oct. 18, 2007 (directing the parties, pursuant to Rule 7(a), to expand the record to include all materials considered by the Governor in deciding to reverse the BPH's grant of parole to the petitioner); Mem. & Order, filed Nov. 14, 2007 (denying the respondent's motion for reconsideration). Rule 7(a) provides: "the judge may direct the parties to expand the [habeas] record by submitting additional materials relating to the petition." Thus, because production of the administrative record may be required pursuant to Rule 7(a), the court cannot find the magistrate judge's Order clearly erroneous or contrary to law. Accordingly, the Order of March 27, 2008 is AFFIRMED. Respondent shall lodge the subject administrative record within 15 days of the date of this order.

IT IS SO ORDERED.

DATED: April 24, 2008

A handwritten signature in black ink, appearing to read "Frank C. Damrell, Jr.", written in a cursive style.

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FRANK C. DAMRELL, Jr.  
UNITED STATES DISTRICT JUDGE